



**US Army Corps
of Engineers**
Huntington District

Public Notice

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Address comments to:

US Army Corps of Engineers, Huntington District
502 Eighth Street
ATTN: CELRH-E
Huntington, West Virginia 25701-2070

PRE-CONSTRUCTION NOTIFICATION REQUIREMENTS FOR NATIONWIDE PERMIT 21, SURFACE COAL MINING ACTIVITIES

The purpose of this public notice is to detail the information requirements for a Nationwide Permit (NWP) 21 evaluation. This includes new projects and current ongoing projects seeking re-authorization (See public notice 200200248-21, dated December 6, 2002, available on the Internet at http://www.lrh.usace.army.mil/or/permits/pub_notices.html).

In addition to the basic requirements of General Condition 13 (Notification) (b) of the NWPs available on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/2002nwps.pdf>, the following information is required in the Pre-Construction Notification (PCN):

1. A detailed description of proposed mining activity.
 - a. Provide the approximate linear feet, depth and acres (extending to the ordinary high water mark) of stream(s) that would be impacted by the proposed activity.
 - b. Provide the approximate acres of wetland(s) that would be impacted by the proposed activity.
 - c. For discharges into special aquatic sites, including wetlands and riffle and pool complexes, the PCN must also include a delineation of affected sites.
 - d. Provide the drainage acreage for the proposed activity (If a valley fill is involved, the drainage acreage must be calculated from the toe of the fill).
 - e. Describe the proposed activity's purpose.
 - f. Provide the date you propose to begin work on the mining activity and the date work is expected to be completed.
 - g. Describe the type (rock, sand, dirt, rubble, etc.) and quantity (cubic yards) of dredged or fill material proposed to be discharged into the aquatic environment.
2. Information to allow the District Engineer to determine if a project will result in minimal adverse environmental effects on the aquatic environment, both individually and cumulatively:
 - a. A discussion of how the project has been designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the site. This discussion may include, but not limited to, the following:
 - i. Demonstration that there is not a practicable alternative in waters of the U.S., including other alternatives that were considered.
 - ii. Demonstration that sediment control structures will be located as close as practical to the fill(s) and/or mining area with which it is associated.
 - b. An assessment of the waters of the U.S. proposed to be impacted by the project. The assessment must include the following information.
 - i. A general description of the aquatic environment directly affected, as well as the aquatic resources a reasonable distance downstream. For stream impacts, the areas to be impacted shall be assessed to include the stream pattern, profile and dimensions. The stream assessment (i.e. The U.S. Environmental Protection Agency's Rapid Bioassessment Protocol for Use in Wadeable Streams and

Rivers [RBP]) shall indicate the ephemeral, intermittent and perennial reaches to be impacted. A functional assessment is required for wetland impacts (i.e. Ohio Rapid Assessment Method [ORAM]) and it should indicate the wetland type(s) to be impacted. Other approved functional assessment methodologies are also acceptable. The assessment must include a brief discussion of the rationale supporting the conclusion.

- ii. Date(s) delineation and/or assessment was/were conducted.
 - iii. Name and contact information of individual(s) conducting the assessment.
 - iv. A site map indicating location(s) of delineation(s) and/or assessment(s) and associated photographs in relation to the proposed activity.
- c. A summary of the proposed impacts to the aquatic resources. This summary must include an evaluation of the impact on the environment that results from the incremental impact of the proposed activity when added to other past, present and reasonably foreseeable future actions regardless of what agency or person undertakes them. An example would be to consider other land disturbance activities such as mining, logging, agriculture, or road construction, within the same watershed as the proposed activity on water quality and aquatic habitat.
3. The PCN should include an original and five copies of the above information to expedite agency coordination.


In accordance with the conditions of NWP 21 a compensatory mitigation plan must be submitted in order to offset the unavoidable permanent and temporary losses of aquatic functions and values and ensure those losses result in minimal adverse effects on the aquatic environment. The compensatory mitigation plan must be developed in accordance with General Condition 19 of the NWPs and the Corps Regulatory Guidance Letter dated December 24, 2002, available on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rgl01-01.htm>. The following is a brief description of the required information to be submitted in a compensatory mitigation plan:

1. Baseline Information;
2. Goals and Objectives;
3. Site Selection;
4. Mitigation Work Plan;
5. Performance Standards;
6. Project Success;
6. Site Protection;
7. Contingency Plan;
8. Monitoring and Long-term Management;
9. Financial Assurances.

Typically, compensatory mitigation consists of on-site and/or off-site stream/wetland restoration, enhancement or creation projects in order to offset the unavoidable impacts to the functions and values of the aquatic resource(s) to be impacted by a proposed operation. However, in some instances, it may be acceptable to allow the use of mitigation banks, in-lieu fee arrangements, or a performance mitigation bond. Use of mitigation banks requires a signed purchase agreement for the number of required credits to offset the unavoidable impacts to the aquatic resource. Under an in-lieu fee arrangement the applicant would contribute a fee into a fund to be used by an independent recipient to accomplish the appropriate compensatory mitigation. In-lieu fee arrangements are only acceptable if federally approved. A performance mitigation bond or other appropriate financial instruments may also be posted for impacts to waters of the U.S. as a result of the proposed surface coal mining activity. The performance bond would be released after said mitigation plan is approved by the Corps.

Please be advised the Corps is continuing to analyze the impacts of Judge Haden's May 8, 2002 decision Kentuckians for the Commonwealth, Inc. v. Colonel John Rivenburgh et al. Civil No. 2:01-0770, U.S. District Court for the Southern District of West Virginia on the Corps' 404 regulatory program. The District Court's Memorandum Opinion and Order of June 17, 2002 clarified the **Huntington District** is enjoined from issuing any further Section 404 permits for fills having no primary purpose or use but the disposal of waste. In particular the issuance of mountaintop removal overburden valley fill or other fill permits solely for waste disposal under Section 404 is enjoined in the Huntington District.

We hope this guidance will assist you in preparing your NWP 21 PCN request. If you have any questions concerning the above, for projects in Ohio please contact Ms. Rebecca A. Rutherford at 304-529-5210 and for projects in Kentucky or West Virginia please contact Mr. Mark A. Taylor at 304-529-5710.

for 
Rebecca Rutherford
Ginger Mullins, Chief
Regulatory Branch

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